

**BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS**

**IN THE MATTER OF
Brandon's Mortuary, Inc.,
Respondent**

A.I.D. ORDER NO. 2021-49

ORDER

On this day, the matter of Brandon's Mortuary, Inc. came before Alan McClain, Arkansas Insurance Commissioner ("Commissioner"). A hearing was held at 10:00 a.m. on October 4, 2021 in the Diamond Mine Room of the Arkansas Department of Commerce, pursuant to the Notice of Public Hearing dated September 2, 2021. The hearing was held before Dan Honey, Counsel, Product Compliance ("Hearing Officer") pursuant to his appointment by the Commissioner in accordance with Ark. Code Ann. § 23-61-103(e)(1). The Arkansas Insurance Department was represented by Amanda Gibson, Associate Counsel. Brandon's Mortuary was represented by Gregory Crain.

FINDINGS OF FACT

1. Respondent Brandon's Mortuary, Inc., has held a prepaid funeral benefit permit in recent years.
2. Respondent's permit expired June 1, 2021 when the submitted renewal paperwork was deficient.
3. Respondent's delinquent 2018 obligations were not submitted to the Department until April 29, 2019, after the receipt of a demand letter. Those obligations included \$525 in late fees

that were incurred in 2018, and the 2018 Annual Report and fees which were due on March 15, 2019.

4. Respondent's 4th Quarter 2019 report was due February 18, 2020, but not submitted until February 26, 2020, or six days late, incurring a \$150 late fee.

5. Respondent's 2019 Annual Report was due March 16, 2020, but not submitted until March 28, 2020, or ten days late, incurring a \$250 late fee.

6. The late fees accrued in Findings of Fact 4 and 5 were not paid until November 13, 2020, approximately nine months and eight months late, respectively.

7. Respondent's 2nd Quarter 2020 report was due August 17, 2020 but not submitted until August 18, 2020, incurring a \$25 late fee. Respondent sent a \$50 check for the late fee and was therefore given a \$25 credit.

8. Respondent's 4th Quarter 2020 report was due February 15, 2021 but not submitted until March 9, 2021, or fifteen days late, incurring a \$250 late fee.

9. Respondent's 2020 Annual Report and estimated \$500 annual fee were due March 15, 2021, and have yet to be submitted, incurring a \$250 late fee.

10. Respondent's 2021 renewal and annual \$200 permit fee were due May 28, 2021. The paperwork submitted on June 4, 2021, included photocopies of the documents (not documents themselves with original signatures, as required), and checks written in amounts that were not correct. The late fee as of June 9, 2021 was \$175.

11. On June 9, the Department gave Respondent a deadline of June 18, 2021 to submit all delinquent fees:

- a. \$250 late fee for 4th Quarter report;
- b. \$500 estimated 2020 Annual Report fee;
- c. \$250 late penalty for 2020 Annual Report;
- d. \$200 renewal fee for prepaid permit; and
- e. \$175 late fee for not renewing the permit timely.

The total sum is \$1375, less the \$25 credit as referenced in Finding of Fact 7, left \$1350 owed to the Department. \$1350 owed in fees and penalties, as described in 11.a through 11.e above, were paid to the Department on September 29, 2021.

12. On June 29, 2021, Kevin Brandon advised the Department he was still working on the Annual Report, which was due March 15, 2021.

13. Respondents are now current on all delinquent and deficient reports, fees, and penalties.

14. No consumer complaints have been submitted to the Department with regard to this matter.

CONCLUSIONS OF LAW

1. Ark. Code Ann. §§ 23-61-101, *et seq.*, assigns the responsibility for administration of the Arkansas Insurance Code to the Arkansas Commissioner of Insurance (hereinafter referred to as the “Commissioner”). The Department is the lawful agency through which the Commissioner administers the Arkansas Insurance Code, and the Department is authorized to bring this action for the protection of Arkansas consumers.

2. The Commissioner has jurisdiction over the parties and subject matter pursuant to Ark. Code Ann. §§ 23-40-101, *et seq.*


3. Ark. Code Ann. §§ 23-40-101, *et seq.*, assigns the responsibility for administration of the Arkansas Prepaid Funeral Benefits Law to the Commissioner. The Department is the lawful agency through which the Commissioner administers the Arkansas Prepaid Funeral Benefits Law.
4. Ark. Code Ann. § 23-40-111(a)(2) requires the permit holder to “be deemed by the commissioner to be competent, trustworthy, and financially responsible to engage in the sale of prepaid funeral contracts in this state.”
5. Ark. Code Ann. § 23-40-119(d)(1)(B) and (C), and (e), require the quarterly reports and fees to be filed, and provides for the levy of a late penalty for any untimely filings, and for the failure to submit the filings.
6. Ark. Code Ann. § 23-40-119(a) requires the annual report and annual report fee to be filed with the Insurance Commissioner on or before March 15 of each year.
7. Ark. Code Ann. § 23-40-110(a) requires organizations desiring to sell prepaid funeral benefits to be licensed to do so. Subsection (b) authorizes the Department to collect a \$200 permit renewal fee.
8. Respondent’s conduct as detailed in Findings of Fact 3, 5, 9, and 12 above, is in violation of Ark. Code Ann. § 23-40-119(a) in that the annual report and fees were not filed and paid on or before March 15 of the years 2019, 2020, and 2021.
9. Respondent’s conduct as detailed in Findings of Fact 4, 7 and 8 above, is in violation of Ark. Code Ann. § 23-40-119(d)(1)(B) and (C) in that the quarterly reports were not filed timely.
10. Respondent’s conduct as detailed in Findings of Fact 2 and 10 above, is in violation of Ark. Code Ann. § 23-40-110.

11. Respondent's conduct as detailed in Findings of Fact 6 and 11 above, is in violation of Ark. Code Ann. § 23-40-111(a)(2) in that failing to remit overdue fees is financially irresponsible.

RECOMMENDATION OF HEARING OFFICER

WHEREFORE, upon consideration of the evidence of record and the foregoing Findings of Fact and Conclusions of Law, the Hearing officer recommends the following:

1. That Respondent's prepaid funeral benefits permit be placed in a probationary status for a period of three (3) years from the date of this Order.
2. That if Respondent misses any deadlines during the probationary period, that a hearing will be set to revoke the organization's prepaid funeral benefits permit.


Dan Honey, Counsel, Product
Compliance, and Hearing Officer


CERTIFICATION

I, Alan McClain , Insurance Commissioner for the State of Arkansas, do hereby certify that the above Findings of Fact, Conclusions of Law, and Recommendation of the Hearing Officer were made by and under my authority and supervision by Dan Honey, Counsel, Product Compliance and Hearing Officer, in this proceeding. I hereby adopt the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendation in full, as set forth herein.

THEREFORE, as recommended by the Hearing Officer, it is hereby ORDERED:

1. That Respondent's prepaid funeral benefits permit be placed in a probationary status for a period of three (3) years from the date of this Order.
2. That if Respondent misses any deadlines during the probationary period, that a hearing will be set to revoke the organization's prepaid funeral benefits permit.

IT IS SO ORDERED THIS 4th DAY OF OCTOBER, 2021.



ALAN MCCLAIN
INSURANCE COMMISSIONER
STATE OF ARKANSAS